

House of Assembly—No 199

As laid on the table and read a first time, 17 November 2021

South Australia

**Planning, Development and Infrastructure
(Exceptional Tree Register) Amendment Bill 2021**

A BILL FOR

An Act to amend the *Planning, Development and Infrastructure Act 2016*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Planning, Development and Infrastructure (Exceptional Tree Register) Amendment Act 2021*.

2—Commencement

This Act comes into operation 12 months after the day on which it is assented to by the Governor.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Planning, Development and Infrastructure Act 2016*

4—Amendment of section 3—Interpretation

- 15 (1) Section 3(1), definition of *development*, (h)—after "regulated tree" insert:
 - or an exceptional tree

- (2) Section 3(1)—after the definition of *essential infrastructure* insert:

exceptional tree means a tree, or a tree within a stand of trees, on the exceptional tree register (whether or not the tree is also declared to be a regulated tree, or also falls within a class of trees declared to be regulated trees, by the regulations);

exceptional tree register—see section 68;

- (3) Section 3(1), definition of *regulated tree*—delete the definition and substitute:

regulated tree means a tree, or a tree within a class of trees, declared to be regulated by the regulations but does not include an exceptional tree;

- (4) Section 3(1), definition of *significant tree*—delete the definition

5—Repeal of section 68

Section 68—delete the section

6—Insertion of Part 5 Division 2 Subdivision 3A

Part 5 Division 2—after Subdivision 3 insert:

Subdivision 3A—Exceptional tree register

68—Exceptional tree register

- (1) The Commission must establish and maintain a register of exceptional trees.
- (2) A tree should be included on the register if 1 or more of the following applies:
 - (a) it is of outstanding horticultural value;
 - (b) it is of a rare species or variety;
 - (c) it occurs in a unique location or context so as to provide a major contribution to the landscape or local character;
 - (d) it is of outstanding age;
 - (e) it is outstanding in height, circumference or canopy spread;
 - (f) it is of outstanding aesthetic significance;
 - (g) it commemorates a particular occasion, including planting by a notable person or being associated with an important local, state or national event;
 - (h) it has outstanding value as habitat for indigenous wildlife;
 - (i) it has a recognised association with Aboriginal people or is valued for continuing and developing cultural traditions;
 - (j) it can be considered an outstanding example of its species;
 - (k) it is important to a community or cultural group for social, cultural or spiritual reasons;
 - (l) it satisfies any criteria prescribed by the regulations.

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- (3) A stand of trees should be included on the register if 1 or more of the following applies:
- (a) as a group they occur in a unique location or context so as to provide a major contribution to the landscape or local character;
 - (b) as a group they are outstanding in circumference or canopy spread;
 - (c) as a group they are of outstanding aesthetic significance;
 - (d) as a group they commemorate a particular occasion, including planting by a notable person or being associated with an important local, state or national event;
 - (e) as a group they have outstanding value as habitat for indigenous wildlife;
 - (f) as a group they have a recognised association with Aboriginal people or are valued for continuing and developing cultural traditions;
 - (g) as a group they can be considered an outstanding example of their species;
 - (h) as a group they are important to a community or cultural group for social, cultural or spiritual reasons;
 - (i) as a group they satisfy any criteria prescribed by the regulations.
- (4) The register must contain the following information in respect of each exceptional tree or stand of exceptional trees:
- (a) a brief description of the tree or stand of trees;
 - (b) the location of the tree or stand of trees;
 - (c) a statement of the reason the tree or stand of trees is exceptional (with reference to 1 or more of the criteria under subsection (2) or (3) (as the case requires)).
- (5) The register must, as far as reasonably practicable, be accurate, complete and updated on at least a monthly basis.
- (6) A council must, at least once each month, provide the Commission with a list of the exceptional trees and stands of exceptional trees in the area of the council.
- (7) A list under subsection (6) must include the information required by subsection (4) in respect of each tree or stand of trees.
- (8) The Planning and Design Code is taken to incorporate the register as in force from time to time.

7—Amendment of section 119—Application and provision of information

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- (1) Section 119(2)—after "a regulated tree" insert:
or an exceptional tree

(2) Section 119(7)—delete subsection (7) and substitute:

(7) An applicant for development approval should not, unless the relevant authority considers that special circumstances apply, be requested to provide an expert or technical report relating to an assessment as to whether a tree to which the application relates is an exceptional tree.

(3) Section 119(8)—delete "that is not a significant tree"

8—Amendment of section 127—Conditions

Section 127(4)—delete "a significant tree" and substitute:

an exceptional tree

9—Insertion of section 135A

Before section 136 insert:

135A—Exceptional trees

(1) A Tree Protection Zone applies to all exceptional trees in accordance with Australian Standard AS4970-2009 *Protection of trees on development sites*.

(2) If development is proposed to be undertaken on a site on which an exceptional tree is located, or within 10 m of an exceptional tree, the applicant for development approval must pay an amount as security for the protection of the tree (a **bond**) to—

(a) if the site is within the area of a council—the council; or

(b) if the site is not within the area of a council—the Minister.

(3) The amount of the bond will be calculated by the relevant authority in respect of the application for development approval taking into account the basic value, species, aesthetics, locality and condition of the tree.

(4) Subject to subsection (5), the council or Minister (as the case may be) must retain the bond and return it to the applicant as soon as reasonably practicable after the date specified in the development approval.

(5) If an unapproved tree-damaging activity has been undertaken in relation to the tree to which the bond relates, the council or Minister (as the case requires) must pay the bond into the relevant fund.

(6) In this section—

relevant fund means—

(a) in the case of a council—

(i) if the council maintains an urban trees fund—that fund; or

(ii) in any other case—the fund into which an amount required under the open space contribution scheme under section 198 of the Act must be paid; or

(b) in the case of the Minister—the Planning and Development Fund;

unapproved tree-damaging activity means a tree-damaging activity that has not been granted development approval or is not otherwise permitted under the Act.

10—Amendment of section 136—Urgent work in relation to trees

Section 136(1)—after "a regulated tree" insert:

or an exceptional tree

11—Amendment of section 137—Interaction of controls on trees with other legislation

(1) Section 137(1)—after "regulated tree" insert:

or an exceptional tree

(2) Section 137(2)—after "regulated tree" insert:

or an exceptional tree

12—Amendment of section 200—Urban trees funds

Section 200(6)—delete "significant trees" wherever occurring and substitute in each case:

exceptional trees

13—Amendment of section 228—Make good orders

Section 228(1)(b)—after "regulated tree" insert:

or exceptional tree